

## **The complaint**

Mr S is unhappy that Fairmead Insurance Limited (Fairmead) declined part of his claim following an escape of water.

## **What happened**

Both parties are familiar with the background to this complaint. So, I've set out a summary of what I think are the key events.

In June 2022, Mr S bought buildings and contents insurance underwritten by Fairmead. In November 2022 he noticed his ceiling was damaged. After his contractor identified considerable damage caused by a leak from the property above, Mr S claimed under his policy.

Just a few days later, while Fairmead looked into his claim, Mr S experienced a further leak from the property above. It damaged the ceiling in other parts of his home. Mr S added this to his existing claim.

Fairmead declined cover for the first claim. That's because Mr S said it must've been an ongoing leak from one that happened years before, but Fairmead wasn't the insurer at that time.

Fairmead accepted the second claim, but Mr S was unhappy with the way it handled the claim.

Mr S complained, but Fairmead didn't change its decision. However, Fairmead did identify service shortfalls and for that it offered £200 compensation. It also confirmed that it would look into recovering the policy excess from the other property's insurer.

Still dissatisfied, Mr S brought his complaint to us. Our investigator agreed that Fairmead hadn't handled the second claim fairly or promptly, and she thought £350 compensation was more appropriate in the circumstances. However, our investigator didn't think Fairmead unfairly declined the first claim.

Mr S didn't agree, and he asked for an ombudsman to decide.

I issued a provisional decision in March 2024 explaining that I was intending to uphold Mr S's complaint. Here's what I said:

***provisional findings***

*The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. My role is to decide whether it's more likely than not, based on the available evidence, that Fairmead responded to Mr S's claim fairly and reasonably in the circumstances.*

*There's no dispute about the cause of damage or that it's the type of damage typically covered under buildings insurance. The policy sets out the detail of the contract between Mr S and Fairmead, so I've taken that as my starting point.*

*Fairmead declined the first part of the claim because it believed the loss date was before the policy started. Mr S said the loss date was November 2022, which was around six months after he bought the policy.*

*For me, the key issue here is whether Mr S ought to have known that an ongoing leak was causing damage to his ceiling. His description of the leak from years before was that the people responsible for the property above fixed the leak and he repaired and redecorated the minor the damage in his own home.*

*Page 24 of the policy, under the heading Exceptions, states that cover is not available for:*

*Damage that would have not have arisen had there not been a failure to deal with existing damage which a reasonable person should have noticed and where there has been an unreasonable delay in starting repairs.*

*This implies that if a reasonable person wouldn't have noticed, then the damage is covered under the policy. So, unless the damage reappeared or further damage happened around that time, I don't think Mr S could reasonably have known whether the leak was fixed properly.*

*Further to this, Mr S wouldn't have known whether it was the same leak that had been causing damage gradually, or whether it was a different, more recent leak. That's because it originated from his neighbour's property and there's no expectation that he'd be aware of any ongoing damage until it became visible in his own home. I note the loss adjuster stated:*

*It is apparent that at some point the ceiling has suffered water damage which has caused the [ceiling damage], this may have been more recently unknown to the Insured or may have been as a result of the escape of water in 2014, given the time passed it is almost impossible to tell.*

*While Fairmead would be entitled to decline a claim for damage which it could demonstrate occurred prior to the start of the policy, based on the loss adjuster's note I'm not persuaded that's the case. Therefore, I think it's reasonable to say the date of loss to Mr S was when he first noticed the damaged ceiling. As that fell within the policy term, I don't think Fairmead declined his claim fairly in the circumstances.*

*To put this right, I think Fairmead should also consider the first part of the claim under the terms and conditions of the policy.*

*Turning to Fairmead's handling of the claim, there's no dispute that it didn't progress the claim in a way that Mr S could reasonably have expected. Fairmead offered £200*

compensation, so I've looked at the shortfalls to decide whether that's reasonable. The shortfalls included:

- Delays progressing the claim after receiving the relevant policy documents and the loss adjuster's report.
- Failure to include costs Mr S sent to the loss adjuster and the loss of that information.
- Lack of communication and failure to provide Mr S with information he asked for.
- Lack of clarity about the policy excess payment.

Our investigator proposed £350 compensation as a more appropriate sum. Based on the shortfalls evidenced, I'm minded to agree. That's because Fairmead received the information it needed to progress Mr S's claim much sooner, and it's reasonable to expect that Fairmead would better manage the claim documentation and communication.

Mr S explained that its failures caused him distress and inconvenience, so he thinks Fairmead should pay more. While it's understandable that this matter caused Mr S some upset, I must bear in mind that some of that is likely because the damage resulting in the claims happened through no fault of his own. Based on the evidence available, I think £350 compensation is fair and reasonable in the circumstances.

For completeness, I'll touch on two matters Mr S raised in his response to our investigator. The first is that he would like confirmation that Fairmead absolutely will refund the excess. I understand the process has been explained to him, which is that Fairmead will return the excess if there's a successful claim against the neighbour's insurer. Therefore, I won't be asking Fairmead to provide any guarantee.

The second is that Mr S would like us to obtain the cost evidence he provided to Fairmead. This service doesn't have free access to Fairmead's data. However, if the information is available, Mr S has already gone through the correct channels to obtain copies of his data held by Fairmead.

In summary, the evidence persuades me that Fairmead didn't handle Mr S's claim promptly, and it unfairly declined part of the claim. So, unless either party provides further evidence which changes my mind, I'm likely to require Fairmead to consider Mr S's full claim in line with the policy and to pay £350 compensation for its shortfalls in handling the claim.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

## **responses**

Fairmead accepted my provisional decision.

Mr S also accepted my provisional decision, although he thought the compensation was too low and he said that in a small claims court, interest would've been awarded.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've decided to uphold Mr S's complaint for the same reasons I set out in my provisional decision. I'll address his further comments now.

Mr S said £350 compensation was low given the considerable inconvenience he experienced, and he thought a clear message should be sent to Fairmead that treating customers unreasonably incurs a penalty. Nevertheless, Mr S accepted the proposed compensation in order to bring the matter to a close.

It's not within my remit to make punitive awards. The compensation is to address the avoidable inconvenience Mr S experienced caused by Fairmead's handling of his claim and which was over and above anything he experienced as a direct result of the escape of water. Although I realise he hoped for more, I note Mr S accepted the compensation set out in my provisional decision.

For completeness, I looked at the evidence again, and I remain satisfied that £350 is fair and reasonable in the circumstances and for the reasons I gave. Therefore, I haven't increased the award.

Mr S provided a re-drafted document of quotes and costs incurred to repair the damage caused by the leaks. Fairmead will look at anything Mr S provides for consideration when looking at his claim. He may wish to send a copy directly to Fairmead.

The final point Mr S made was that a small claims court awards interest on an overdue balance. He asked me to make a similar award calculated on a balance overdue for 12 months.

Where there is a clear failure on Fairmead's part to reimburse repair costs, I'd ordinarily consider awarding interest. Progressing claims of this nature do take time, and the avoidable delays were identified as being around four to five months.

Fairmead declined the first claim in line with the policy based on Mr S's report that the damage was caused by a leak that happened years ago. To some degree, it reasonably declined the claim at that point, so I can't say Fairmead acted unreasonably when it first refused to pay. It's because of the subsequent reports that I think Fairmead should've reconsidered the first claim, so any payment due to Mr S isn't overdue by 12 months as he says.

Fairmead said Mr S refused its settlement offer because it didn't take into consideration all of his costs. Although Mr S sent his quotes and list of costs to Fairmead, he was aware that it couldn't access them. While it's possible Fairmead should've been able to access the documents, I can't reasonably say it should've made payments that it couldn't substantiate. Mr S didn't provide the evidence again when Fairmead asked, and Mr S could've accepted the settlement Fairmead offered while continuing to dispute the amount, which would've minimised his losses. So, I don't think it's fair to award interest on a payment Fairmead couldn't properly assess sooner.

Overall, I don't find that interest on any reimbursement of repair costs is due, and the compensation I've awarded is sufficient to address the delays caused by the identified shortfalls in Fairmead's handling of Mr S's claim.

## **My final decision**

For the reasons I've explained above, and in my provisional decision, my final decision is that I uphold Mr S's complaint and Fairmead Insurance Limited must:

- Consider Mr S's full claim in line with the policy terms and conditions, taking his loss date as falling within the term of the policy.
- Pay £350 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 May 2024.

Debra Vaughan  
**Ombudsman**